

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against:

MARISA MAGANA

Applicant for Registered Nurse License

Respondent

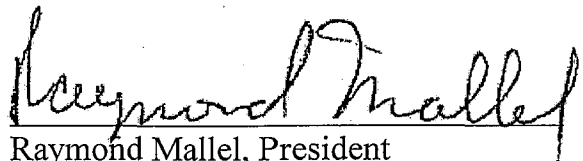
Case No. 2012 – 461

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective on August 30, 2012.

IT IS SO ORDERED July 31, 2012.



Raymond Mallel, President
Board of Registered Nursing
Department of Consumer Affairs
State of California

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Attorney General of California
2 ARTHUR D. TAGGART
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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues
Against:

Case No. 2012-461

12 **MARISA MAGANA**
13 **13 Cameo Drive, #9**
Chico, CA 95973
14 **Registered Nurse License Applicant**

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER.**

15 **Respondent.**

16
17 **IT IS STIPULATED AND AGREED** by and between the parties to the above-entitled
18 proceedings that the following matters are true:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) is the Interim Executive Officer of the
21 Board of Registered Nursing (Board). She brought this action solely in her official capacity and
22 is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by
23 Brian S. Turner, Deputy Attorney General.

24 2. Respondent Marisa Magana (Respondent) is represented in this proceeding by
25 attorney Kendall Dawson Wasley, Esq., whose address is: 901 F Street, Suite 200, Sacramento,
26 CA 95814.

27 3. On or about April 19, 2011, Respondent filed an application dated April 11, 2011,
28 with the Board of Registered Nursing to obtain a Registered Nurse License.

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CONTINGENCY

11. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or her counsel. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that facsimile and email copies of this Stipulated Settlement and Disciplinary Order, including facsimile or email signatures thereto, shall have the same force and effect as the originals.

13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS ORDERED

1. The application of Respondent Marisa Magana for licensure is hereby granted. Upon successful completion of the licensure examination and all other licensing requirements, a license shall be issued to Respondent. The license shall immediately be revoked, the order of revocation

1 stayed and Respondent placed on probation for a period of three (3) years on the following
2 conditions:

3 **Severability Clause.** Each condition of probation contained herein is a separate and
4 distinct condition. If any condition of this Order, or any application thereof, is declared
5 unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other
6 applications thereof, shall not be affected. Each condition of this Order shall separately be valid
7 and enforceable to the fullest extent permitted by law.

8 1. **Obey All Laws.** Respondent shall obey all federal, state and local laws. A full and
9 detailed account of any and all violations of law shall be reported by Respondent to the Board in
10 writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with
11 this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within
12 45 days of the effective date of the decision, unless previously submitted as part of the licensure
13 application process.

14 **Criminal Court Orders:** If Respondent is under criminal court orders, including
15 probation or parole, and the order is violated, this shall be deemed a violation of these probation
16 conditions, and may result in the filing of an accusation and/or petition to revoke probation.

17 2. **Comply with the Board's Probation Program.** Respondent shall fully comply with
18 the conditions of the Probation Program established by the Board and cooperate with
19 representatives of the Board in its monitoring and investigation of the Respondent's compliance
20 with the Board's Probation Program. Respondent shall inform the Board in writing within no
21 more than 15 days of any address change and shall at all times maintain an active, current license
22 status with the Board, including during any period of suspension.

23 Upon successful completion of probation, Respondent's license shall be fully restored.

24 3. **Report in Person.** Respondent, during the period of probation, shall appear in
25 person at interviews/meetings as directed by the Board or its designated representatives.

26 4. **Residency, Practice, or Licensure Outside of State.** Periods of residency or
27 practice as a registered nurse outside of California shall not apply toward a reduction of this
28 probation time period. Respondent's probation is tolled, if and when she resides outside of

1 California. Respondent must provide written notice to the Board within 15 days of any change of
2 residency or practice outside the state, and within 30 days prior to re-establishing residency or
3 returning to practice in this state.

4 Respondent shall provide a list of all states and territories where she has ever been licensed
5 as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide
6 information regarding the status of each license and any changes in such license status during the
7 term of probation. Respondent shall inform the Board if she applies for or obtains a new nursing
8 license during the term of probation.

9 5. **Submit Written Reports.** Respondent, during the period of probation, shall submit
10 or cause to be submitted such written reports/declarations and verification of actions under
11 penalty of perjury, as required by the Board. These reports/declarations shall contain statements
12 relative to Respondent's compliance with all the conditions of the Board's Probation Program.
13 Respondent shall immediately execute all release of information forms as may be required by the
14 Board or its representatives.

15 Respondent shall provide a copy of this Decision to the nursing regulatory agency in every
16 state and territory in which she has a registered nurse license.

17 6. **Function as a Registered Nurse.** Respondent, during the period of probation, shall
18 engage in the practice of registered nursing in California for a minimum of 24 hours per week for
19 6 consecutive months or as determined by the Board.

20 For purposes of compliance with the section, "engage in the practice of registered nursing"
21 may include, when approved by the Board, volunteer work as a registered nurse, or work in any
22 non-direct patient care position that requires licensure as a registered nurse.

23 The Board may require that advanced practice nurses engage in advanced practice nursing
24 for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

25 If Respondent has not complied with this condition during the probationary term, and
26 Respondent has presented sufficient documentation of her good faith efforts to comply with this
27 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
28 extension of Respondent's probation period up to one year without further hearing in order to

1 comply with this condition. During the one year extension, all original conditions of probation
2 shall apply.

3 **7. Employment Approval and Reporting Requirements.** Respondent shall obtain
4 prior approval from the Board before commencing or continuing any employment, paid or
5 voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
6 performance evaluations and other employment related reports as a registered nurse upon request
7 of the Board.

8 Respondent shall provide a copy of this Decision to her employer and immediate
9 supervisors prior to commencement of any nursing or other health care related employment.

10 In addition to the above, Respondent shall notify the Board in writing within seventy-two
11 (72) hours after she obtains any nursing or other health care related employment. Respondent
12 shall notify the Board in writing within seventy-two (72) hours after she is terminated or
13 separated, regardless of cause, from any nursing, or other health care related employment with a
14 full explanation of the circumstances surrounding the termination or separation.

15 **8. Supervision.** Respondent shall obtain prior approval from the Board regarding
16 Respondent's level of supervision and/or collaboration before commencing or continuing any
17 employment as a registered nurse, or education and training that includes patient care.

18 Respondent shall practice only under the direct supervision of a registered nurse in good
19 standing (no current discipline) with the Board of Registered Nursing, unless alternative methods
20 of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are
21 approved.

22 Respondent's level of supervision and/or collaboration may include, but is not limited to the
23 following:

24 (a) Maximum - The individual providing supervision and/or collaboration is present in
25 the patient care area or in any other work setting at all times.

26 (b) Moderate - The individual providing supervision and/or collaboration is in the patient
27 care unit or in any other work setting at least half the hours Respondent works.

28 (c) Minimum - The individual providing supervision and/or collaboration has person-to-

1 person communication with Respondent at least twice during each shift worked.

2 (d) Home Health Care - If Respondent is approved to work in the home health care
3 setting, the individual providing supervision and/or collaboration shall have person-to-person
4 communication with Respondent as required by the Board each work day. Respondent shall
5 maintain telephone or other telecommunication contact with the individual providing supervision
6 and/or collaboration as required by the Board during each work day. The individual providing
7 supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to
8 patients' homes visited by Respondent with or without Respondent present.

9 9. **Employment Limitations.** Respondent shall not work for a nurse's registry, in any
10 private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse,
11 or for an in-house nursing pool.

12 Respondent shall not work for a licensed home health agency as a visiting nurse unless the
13 registered nursing supervision and other protections for home visits have been approved by the
14 Board. Respondent shall not work in any other registered nursing occupation where home visits
15 are required.

16 Respondent shall not work in any health care setting as a supervisor of registered nurses.
17 The Board may additionally restrict Respondent from supervising licensed vocational nurses
18 and/or unlicensed assistive personnel on a case-by-case basis.

19 Respondent shall not work as a faculty member in an approved school of nursing or as an
20 instructor in a Board approved continuing education program.

21 Respondent shall work only on a regularly assigned, identified and predetermined
22 worksite(s) and shall not work in a float capacity.

23 If Respondent is working or intends to work in excess of 40 hours per week, the Board may
24 request documentation to determine whether there should be restrictions on the hours of work.

25 10. **Complete a Nursing Course(s).** Respondent, at her own expense, shall enroll and
26 successfully complete a course(s) relevant to the practice of registered nursing no later than six
27 months prior to the end of her probationary term.

28 Respondent shall obtain prior approval from the Board before enrolling in the course(s).

1 Respondent shall submit to the Board the original transcripts or certificates of completion for the
2 above required course(s). The Board shall return the original documents to Respondent after
3 photocopying them for its records.

4 **11. Violation of Probation.** If Respondent violates the conditions of her probation, the
5 Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order
6 and impose the stayed discipline (revocation/suspension) of Respondent's license.

7 If during the period of probation, an accusation or petition to revoke probation has been
8 filed against Respondent's license or the Attorney General's Office has been requested to prepare
9 an accusation or petition to revoke probation against Respondent's license, the probationary
10 period shall automatically be extended and shall not expire until the accusation or petition has
11 been acted upon by the Board.

12 **12. License Surrender.** During Respondent's term of probation, if she ceases practicing
13 due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation,
14 Respondent may surrender her license to the Board. The Board reserves the right to evaluate
15 Respondent's request and to exercise its discretion whether to grant the request, or to take any
16 other action deemed appropriate and reasonable under the circumstances, without further hearing.
17 Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be
18 subject to the conditions of probation.

19 Surrender of Respondent's license shall be considered a disciplinary action and shall
20 become a part of Respondent's license history with the Board. A registered nurse whose license
21 has been surrendered may petition the Board for reinstatement no sooner than the following
22 minimum periods from the effective date of the disciplinary decision:

23 (1) Two years for reinstatement of a license that was surrendered for any reason other
24 than a mental or physical illness; or

25 (2) One year for a license surrendered for a mental or physical illness.

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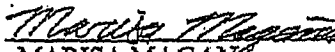
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ACCEPTANCE

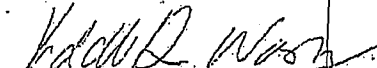
I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Kendall Dawson Wasley, Esq.. I understand the stipulation and the effect it will have on my Registered Nurse License and Application. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Registered Nursing.

DATED: 3/27/12


MARISA MAGANA
Respondent

I have read and fully discussed with Respondent Marisa Magana the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 3/27/12


Kendall Dawson Wasley, Esq.
Attorney for Respondent

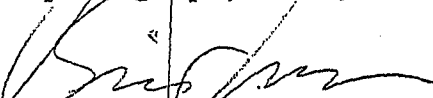
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

Dated: April 30, 2012

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
ARTHUR D. TAGGART
Supervising Deputy Attorney General


BRIAN S. TURNER
Deputy Attorney General
Attorneys for Complainant

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Stipulation.rtf

Exhibit A

Statement of Issues No. 2012-461

1 KAMALA D. HARRIS
Attorney General of California
2 ARTHUR D. TAGGART
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3 BRIAN S. TURNER
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7 *Attorneys for Complainant*

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BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues
Against:

Case No. **2012-461**

12 **MARISA MAGANA**
13 13 Cameo Drive, #9
14 Chico, CA 95973

STATEMENT OF ISSUES

15 **Registered Nurse License Applicant**

16 **Respondent.**

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Statement of Issues solely
21 in her official capacity as the Interim Executive Officer of the Board of Registered Nursing
22 ("Board"), Department of Consumer Affairs.

23 **Application Information**

24 2. On or about April 19, 2011, the Board received an Application for Licensure by
25 Examination from Marisa Magana ("Respondent"). On or about April 11, 2011, Marisa Magana
26 certified under penalty of perjury to the truthfulness of all statements, answers, and
27 representations in the application. The Board denied the application on August 15, 2011.

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1 (c) Be convicted of a criminal offense involving the prescription;
2 consumption, or self-administration of any of the substances described in
3 subdivisions (a) and (b) of this section, or the possession of, or falsification of a
4 record pertaining to, the substances described in subdivision (a) of this section, in
5 which event the record of the conviction is conclusive evidence thereof.

6 7. Code section 2765 states:

7 A plea or verdict of guilty or a conviction following a plea of nolo
8 contendere made to a charge substantially related to the qualifications, functions and
9 duties of a registered nurse is deemed to be a conviction within the meaning of this
10 article. The board may order the license or certificate suspended or revoked, or may
11 decline to issue a license or certificate, when the time for appeal has elapsed or the
12 judgment of conviction has been affirmed on appeal or when an order granting
13 probation is made suspending the imposition of sentence, irrespective of a subsequent
14 order under the provisions of Section 1203.4 of the Penal Code allowing such person
15 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
16 the verdict of guilty, or dismissing the accusation, information or indictment.

17 FIRST CAUSE FOR DENIAL OF APPLICATION

18 (Criminal Conviction)

19 8. Respondent's application is subject to denial pursuant to Code sections 480,
20 subdivision (a)(1) and 2761, subdivision (f), in that Respondent has been convicted of the
21 following crime that is substantially related to the qualifications, functions, or duties of a
22 registered nurse:

23 a. On or about May 17, 2010, in the Superior Court, County of Butte, California in
24 the matter entitled *People vs. Marisa Magna*, 2010, Case No. SCR75926, Respondent was
25 convicted following her plea of nolo contendere to a violation of Vehicle Code section 23152,
26 subdivision (a) (driving under the influence of alcohol), a misdemeanor. The circumstances of
27 the crime are that on February 7, 2010, Respondent was arrested for driving under the influence
28 of alcohol following a traffic stop. Respondent's blood alcohol level measured .24%.

29 SECOND CAUSE FOR DENIAL OF APPLICATION

30 (Committed Acts Which if Done by a Licentiate Would Constitute Cause for Discipline)

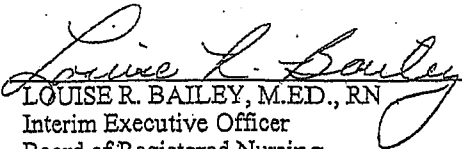
31 9. Respondent's application is subject to denial pursuant to Code section 480
32 subdivision (a)(3)(A), in that Respondent committed acts which if done by a licentiate constitute
33 cause for discipline pursuant to Code sections 2761, subdivisions (a) and (f); and, 2762,
34 subdivisions (b) and (c).

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Denying the application of Marisa Magana for a Registered Nurse License; and,
2. Taking such other and further action as deemed necessary and proper.

DATED: February 22, 2012


LOUISE R. BAILEY, M.Ed., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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